

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Criminal Action

No. 02-27 E

ALEXANDER PADILLA,

Defendant.

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Transcript of proceedings on May 17, 2004,  
United States District Court, Erie, Pennsylvania,  
before Maurice B. Cohill, Jr., District Judge

APPEARANCES:

For the Government: Marshall J. Piccinini, Esq.

For the Defendant: Simon T. Steckel, Esq.

Court Reporter: Richard T. Ford, RMR, CRR  
619 U.S. Courthouse  
Pittsburgh, PA 15219  
(412) 261-0802

Proceedings recorded by mechanical stenography; transcript  
produced by computer-aided transcription

1 (Proceedings held in open court; May 17, 2004).

2 (In chambers portion not transcribed).

3 THE COURT: This is the time set for the sentencing  
4 of Alexander Padilla. I had a conference -- the Government  
5 has filed a 5K motion for the Court to consider a downward  
6 departure from what the guidelines call for based on  
7 Mr. Padilla's cooperation with the Government, and we had a  
8 conference in chambers at which we reviewed his cooperation  
9 and we directed that that portion of this hearing be placed  
10 under seal.

11 Neither the Government nor the Defendant have  
12 raised any legal or factual objections to the presentence  
13 report. We note that Mr. Padilla and his attorney have signed  
14 a notice indicating they've received and reviewed the report.  
15 We will make that part of the record under seal. If an appeal  
16 should be taken, counsel, of course, will be permitted access  
17 to that report.

18 There's been no information withheld from the  
19 Defendant which was given to the Court.

20 Since no legal or factual objections have been  
21 filed by either party, we find that the appropriate offense  
22 level here is 29 and the criminal history category is Roman  
23 numeral two. Thus, the applicable guideline range is 120 to  
24 121.

25 MR. PICCININI: Actually, Your Honor, it is 97 to

1 121, but there is a ten-year minimum.

2 THE COURT: 120 to 121 months imprisonment,  
3 supervised release of five years, and a fine in the range of  
4 15,000 to \$4 million.

5 At this time, Mr. Steckel, is there anything you  
6 wish to say or introduce any testimony in behalf of your  
7 client?

8 MR. STECKEL: Yes, Your Honor. Your Honor,  
9 initially let me just state --

10 THE COURT: Mr. Padilla, you can sit down.

11 MR. STECKEL: I have filed no objections to the  
12 presentence report. I would just point out, I spoke to  
13 Mr. Piccinini in advance of this hearing. There is one DUI  
14 arrest which is not contained within the presentence report  
15 pertaining to Mr. Padilla. However, that will not change  
16 Mr. Piccinini's recommendation with regard to the Defendant's  
17 sentence.

18 THE COURT: Thank you.

19 MR. STECKEL: Your Honor, chronologically, when  
20 Mr. Padilla was arrested in September of 2002, I immediately  
21 reached out at my client's request to Mr. Piccinini with  
22 regard to what my client's intentions at this point were going  
23 to be with regard to this case. The decisions which he made  
24 very, very early on in this case have certainly followed  
25 through to the sentencing as we stand here today.

1           At no point have we sought the Court's time with  
2 regard to hearings on any motions, defensive pleadings, things  
3 of that nature. Mr. Padilla made a conscious decision very,  
4 very early on in this case he was going to cooperate fully  
5 with the Government, and he has done so, and the Court is well  
6 aware of what that cooperation has entailed.

7           I think it's important for the Court to consider  
8 this case now as it's pending in excess of a year, close to  
9 two years, and during that period of time Mr. Padilla's  
10 intentions, his direction, his focus have been specific and  
11 deliberate with regard to assisting the Government in any way  
12 he possibly can.

13           Mr. Padilla during the course of this case, in July  
14 of last year -- Mr. Padilla has been in the motorcycle  
15 business, he owns a shop in which they repair and customize  
16 motorcycles. In July of 2003, he was test driving a  
17 motorcycle not even a block from his shop, and as he was  
18 driving down the street a block from his shop, he was --  
19 unfortunately a car cut in front of him to turn into a  
20 driveway and the resulting crash has seriously altered  
21 Mr. Padilla's life. I think the Court is aware of this  
22 because at one point we had to continue the sentencing in this  
23 matter going back into last year and I included a copy of a  
24 report from a physician who was treating him at the time.

25           Basically Mr. Padilla hit this car, which was cited

1 for making a left turn in front of him while he was test  
2 driving the vehicle, hit the motorcycle so hard the motorcycle  
3 actually was severed into two pieces. Traffic homicide was  
4 called to the scene and they did not expect Mr. Padilla to  
5 survive the accident. He was in intensive care for awhile,  
6 went through blood transfusions, operations, et cetera.

7           Although he stands before you today for sentencing,  
8 the most significant injury which he will carry with him the  
9 rest of his life is the ulnar nerve, which is a nerve that  
10 basically plays a major part in the dexterity and strength of  
11 one's arm, and his dominant arm, which was his right arm, was  
12 severed. Although surgically repaired, Mr. Padilla has never  
13 been able to regain the strength and dexterity in the arm.

14           So he went from the point where he was actually  
15 running, working, and actively working on motorcycles in the  
16 shop where now he is nothing more than custodian of the shop  
17 because he lost the ability of his dominant arm.

18           That all took place during the course of this case  
19 and I ask the Court to consider that in regard to imposing  
20 sentence, specifically with regard to the fine. I know there  
21 was a possibility the Court could impose a fine; I would ask  
22 the Court not to consider imposing a fine against Mr. Padilla  
23 because when he is ultimately released from whatever period of  
24 incarceration the Court would impose on him, the ability to  
25 earn a living is significantly diminished.

1 With regard to the guidelines, Your Honor, the  
2 guidelines in this case at this point recommend, prior to the  
3 Court's consideration of a 5K, the recommended range right now  
4 is 93 to 121 months. There was an artificial floor as it  
5 stands right now of 120 months, but that exists only until the  
6 Government files the 5K. Once the Government files a 5K, the  
7 Court then becomes free to sentence within any range the Court  
8 deems proper, and I believe based upon that scenario, with the  
9 filing of the 5K, there no longer exists a 120-month mandatory  
10 minimum in this case.

11 THE COURT: That's correct.

12 MR. STECKEL: So what I would ask the Court to  
13 consider is I would ask the Court to consider sentencing  
14 Mr. Padilla at a 50 percent reduction of the low end of the  
15 guideline range as it exists in this case, which would be 97.  
16 I would ask the Court, based upon the information the Court  
17 has taken in chambers, consider sentencing Mr. Padilla to a  
18 sentence of approximately 48 months, which give or take is  
19 approximately one half of the low end of the guidelines as it  
20 exists in this case.

21 I had spoken to Mr. Piccinini about my  
22 recommendation in advance of this today. I know he has  
23 advised me that the Government's position is not to make a  
24 specific sentencing recommendation. However, I do not believe  
25 he opposes me in my recommendation to the Court.

1           Mr. Padilla's wife is here. She's traveled from  
2 Florida to be present at her husband's sentence.

3           What I would ask the Court to do is to consider  
4 everything the Court has heard, sentence Mr. Padilla to a  
5 sentence of approximately 48 months of incarceration. I would  
6 ask the Court not to impose a fine. I would ask the Court to  
7 recommend that he serve his time in a facility somewhere  
8 located -- a camp facility located in the state of Florida.  
9 And, finally, I would ask the Court to set a voluntary  
10 surrender date of approximately 90 days from today. The  
11 injuries which he has suffered as a result of the accident,  
12 there is ongoing litigation with regard to that. Hopefully it  
13 will be resolved within the next 30 to 60 days, and I would  
14 ask the Court to give Mr. Padilla a 90-day surrender date so  
15 we can tie up those loose ends and Mr. Padilla can tie up  
16 whatever loose ends there are regarding that case and  
17 following that report to the Bureau of Prisons.

18           THE COURT: Mr. Padilla, anything else you wish to  
19 say on your own behalf?

20           THE DEFENDANT: Yes, I would like to apologize to  
21 the Courts and ask that the Court please be merciful.

22           THE COURT: Thank you. Mr. Piccinini, does the  
23 Government have anything?

24           MR. PICCININI: No, Your Honor, I rely on the  
25 testimony we provided to you in chambers. That's all I have.

1 THE COURT: Thank you. Well, I gather from what I  
2 have read here and I guess I should say maybe what I infer  
3 from the presentence investigation is that Mr. Padilla was a  
4 pretty -- was pretty high up in the chain of drug distribution  
5 in Western Pennsylvania. Certainly these people with whom he  
6 was involved brought a lot of drugs into Pennsylvania.  
7 Mr. Hartman said that Mr. Padilla was his supplier.

8 But I am also now going to consider the report that  
9 I received in chambers with respect to Mr. Padilla's  
10 cooperation, and that cooperation was extensive. I am going  
11 to take that into consideration as well.

12 Mr. Steckel, is there any reason sentence should  
13 not be imposed at this time?

14 MR. STECKEL: No, sir, Your Honor, although I would  
15 like to point out with regard to the Court's comments, the  
16 individual whom we discussed in chambers, the initial of the  
17 various, that was the individual within the chain who would  
18 have been in a position directly above Mr. Padilla, making him  
19 basically nothing more than a middleman within that chain.

20 THE COURT: Thank you.

21 MR. STECKEL: Thank you.

22 THE COURT: Mr. Padilla, is there any reason that  
23 sentence should not be imposed at this time?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: Mr. Piccinini?



1 MR. PICCININI: No, Your Honor.

2 THE COURT: Pursuant to the Sentencing Reform Act  
3 of 1984, it is the judgment of the Court that the Defendant,  
4 Alexander Padilla, is hereby committed to the custody of the  
5 Bureau of Prisons to be imprisoned for a term of 48 months.

6 The Defendant shall make -- the Defendant shall  
7 notify -- well, let me step back a minute.

8 I am not going to make a 90-day -- I am going to  
9 let him self-report.

10 MR. STECKEL: Thank you, Your Honor.

11 THE COURT: I will recommend he be placed somewhere  
12 in Florida. Of course, that's only a recommendation from me.  
13 His final placement is up to the Bureau of Prisons.

14 I am not going to grant the 90-day thing. I think  
15 it is usually about two months anyway, these dates, isn't it?

16 MR. STECKEL: I think it is about two months, yes.

17 THE COURT: So I think that should be enough. I am  
18 not going to impose on the Marshal Service a time for him  
19 to -- or I guess I should say the Bureau of Prisons for a time  
20 by which he should report. They have got enough problems and  
21 we will let them decide when he should report.

22 Upon release from imprisonment, the Defendant shall  
23 be placed on supervised release for a term of five years.

24 Within 72 hours of release from the custody of the  
25 Bureau of Prisons, the Defendant shall report to the Probation

1 Office in the district to which he is released.

2 While on supervised release the Defendant shall not  
3 commit another federal, state, or local crime; shall comply  
4 with the standard conditions that have been adopted by this  
5 Court; shall comply with the following additional conditions:

6 The Defendant shall not possess a firearm or  
7 destructive device.

8 The Defendant shall not illegally possess a  
9 controlled substance.

10 The Defendant shall participate in a program of  
11 testing and, if necessary, treatment for substance abuse as  
12 directed by the probation officer until such time as the  
13 Defendant is released from the program by the probation  
14 officer.

15 Further, the Defendant shall be required to  
16 contribute to the costs of services for any such treatment in  
17 an amount determined reasonable by the probation officer, but  
18 not to exceed the actual cost.

19 The Defendant shall submit to one drug urinalysis  
20 within 15 days after being placed on supervision and at least  
21 two periodic tests thereafter.

22 The Defendant shall pay any -- well, it is further  
23 ordered that Defendant shall pay to the United States a  
24 special assessment of \$100, which shall be paid to the United  
25 States District Court Clerk forthwith in the event it has not

1 already been paid.

2           The Court finds that due to the Defendant's  
3 financial obligations to his children it would be unjust to  
4 impose a fine at this time, and we will waive imposition of a  
5 fine. We feel that a sentence of 48 months imprisonment at  
6 this time followed by a term of five years supervised release  
7 does adequately address the sentencing objectives of  
8 individual and general deterrence and punishment, as well as  
9 protection of the community.

10           Mr. Padilla, you have a right to appeal. You are  
11 entitled to a lawyer at every stage of the proceedings. If  
12 you cannot afford an attorney, one will be provided for you  
13 without charge.

14           Are there any counts to be dismissed here?

15           MR. PICCININI: There are not, Your Honor.

16           THE COURT: Okay. Court's adjourned.

17           MR. STECKEL: Could I just have one request to the  
18 Court. With regard to the J&C, could the Court recommend that  
19 Mr. Padilla participate in a drug program while in the Bureau  
20 of Prisons. I think there was some history of marijuana abuse  
21 and he has never been in a drug program before.

22           THE COURT: I will recommend that. I think those  
23 programs are so filled that unless it's a real, real bad  
24 addict, the chances are slim he will get in. But I will make  
25 that recommendation.

1 MR. STECKEL: I understand. Thank you, Your Honor.  
2 (Record closed).  
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11 C E R T I F I C A T E

12 I, Richard T. Ford, certify that the foregoing  
13 is a correct transcript from the record of proceedings in the  
14 above-titled matter.

15 S/Richard T. Ford \_\_\_\_\_  
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